Strack v. Frey
Doc. 49 Att. 3

# EXHIBIT "C"

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April 12, 2007

**VIA EMAIL: BFEUER@BN.COM**
**AND U.S. REGULAR MAIL**

Brad Feuer, General Counsel
Barnes & Noble, Inc.
122 Fifth Avenue
New York, NY 10011

**Re: "*A Million Little Pieces*" Litigation, 06-mdl-1771 (U.S.D.C. SDNY).**

Dear Mr. Feuer:

We are court appointed Class Counsel in the above referenced matter pending in the United States District Court for the Southern District of New York. We represent the class of consumers who purchased the book *A Million Little Pieces* from the date of the book's initial publication through and including January 26, 2006. As you may be aware from press reports, a classwide settlement has been reached between the Plaintiffs' Class, the publisher (Random House), and the book's author (James Frey). A motion for preliminary court approval of this settlement is currently pending before Judge Richard J. Holwell.

As part of the preliminary approval process, the Court has been asked to approve a plan to notify class members of the settlement. We have sought approval of a notice plan that provides for (1) publication of the notice in over 900 newspapers across the country; (2) the establishment of a dedicated website (www.amlpsettlement.com) where class members can obtain information about the settlement and print claim forms; and (3) direct mailing of notice by Random House to customers who purchased the book directly from Random House's website.

However, the Court has requested that Class Counsel inquire of some of the larger retail book sellers regarding their willingness to voluntarily provide additional notice to their customers. To assist us in advising the Court, we would like to know the answers to the following questions:

1. Would your company be willing to voluntarily deliver (by e-mail or otherwise) the class notice directly to your customers who purchased the book? If not, why not?

2. Approximately what percentage of your book sales are made at your brick and mortar stores? With respect to those sales, do you have any records that would allow your company to determine who purchased the book (*i.e.* any records from any frequent buyers' program during the relevant period – prior to January 27, 2006)? Are there any restrictions on the use of this information?

3. With respect to any sales made through your online operations, do you have any records that would allow your company to determine who purchased the book? Are there any restrictions on the use of this information?

4. With respect to your online operations, do you routinely e-mail materials to your customers?

5. As an alternative to any direct notice, would your company be willing to

   a) place a banner-style ad somewhere on your website that links interested customers to our dedicated settlement website, or

   b) place a written notice at the checkout counters at each of your brick and mortar stores for a specified period of time notifying class members of the settlement.

6. With respect to any of the efforts above, would there be any cost or burden associated with your efforts? If so, please give us an estimate of the cost.

We are required to provide the Court with the results of our inquiry by April 27, 2007. Accordingly, we would appreciate a written response to this correspondence no later than April 20, 2007, if at all possible. In the interim, should you wish to speak with us regarding these issues, we remain available at your convenience. We appreciate your attention to this matter and look forward to your response.

Very truly yours,

BRODSKY & SMITH, LLC

By:__________________________
Evan J. Smith, Esquire
240 Mineola Boulevard
Mineola, NY 11501
(516) 741-0626

LARRY D. DRURY, LTD.

By:__________________________
Larry D. Drury, Esquire
205 West Randolph Street, Suite 1430
Chicago, IL 60606
(312) 346-7950

*Co-Lead Counsel for Class*

EJS/jf
Enclosures
cc. Mark B. Blocker, Esquire (Counsel for Random House)
Sidley Austin – Illinois Office (via regular mail)

Derek J. Meyer, Esquire (Counsel for James Frey)
McDermott Will & Emery – Illinois Office (via regular mail)

**Evan J. Smith**

**From:** Evan J. Smith [esmith@brodsky-smith.com]
**Sent:** Thursday, April 12, 2007 6:17 PM
**To:** 'bfeuer@bn.com'
**Cc:** 'Ldrurylaw@aol.com'; 'Andolina, Michael C.'; 'dmeyer@mwe.com'; 'Blocker, Mark B.'
**Subject:** A Million Little Pieces Class Action Litigation

Dear Brad,

Please see attached correspondence. Thank you for your attention.

Evan Smith

Evan J. Smith, Esquire
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**Evan J. Smith**

**From:** Brad Feuer [BFeuer@bn.com]
**Sent:** Friday, April 13, 2007 5:13 PM
**To:** Evan J. Smith
**Cc:** Ldrurylaw@aol.com; Andolina, Michael C.; dmeyer@mwe.com; Blocker, Mark B.
**Subject:** RE: A Million Little Pieces Class Action Litigation

Hi Evan,

Please be advised that Barnes & Noble does not have any practical (and perhaps no possible) method of determining which of our customers purchased *A Million Little Pieces* and further believe that, even if it were possible, determining which of our customers purchased the book would be violative of their First Amendment protections. Therefore, we would be unable to provide notice to our customers as contemplated by your letter.

Sincerely yours,

Brad

Bradley A. Feuer, Esq.
Counsel
Barnes & Noble, Inc.
122 Fifth Avenue
New York, New York 10011
212-633-3245 (telephone)
212-463-5683 (facsimile)
bfeuer@bn.com

-----Original Message-----
**From:** Evan J. Smith [mailto:esmith@brodsky-smith.com]
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Evan Smith

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